

**IN THE UNITED STATES DISTRICT COURT FOR  
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HUNTINGTON DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	
	)	
	)	
<b>v.</b>	)	<b>Criminal Action No. 3:02-cr-00231</b>
	)	<b>Honorable Robert C. Chambers</b>
	)	
<b>JOHN DAVID MOONEY,</b>	)	
	)	
<b>Defendant.</b>	)	

**MOTION FOR SUR-REBUTTAL DURING CLOSING ARGUMENTS**

COMES NOW the Defendant, by counsel, Nicholas S. Preservati and Joseph L. Jenkins, of Preservati Law Offices, PLLC, and hereby moves this Honorable Court for an Order allowing the Defendant to present sur-rebuttal during closing argument, and in support thereof states as follows:

The party with the burden of proof has the right to end the proceeding. Marshall, et al., v. Local Union 20, International Brotherhood of Teamsters, 1979 U.S. Dist. LEXIS 13373 (N.D. Ohio 1979). In this case, Mr. Mooney has asserted the affirmative defense of justification, for which he carries the burden of proof by a preponderance of the evidence. Therefore, given that it is Mr. Mooney, and not the United States, that ultimately carries the burden of proof in this case, Mr. Mooney requests that he be allowed to granted the right to end closing argument through sur-rebuttal.

WHEREFORE, the Defendant, Mr. Mooney, respectfully requests that this Honorable Court grant his Motion for Sur-Rebuttal during Closing Arguments, and any other relief this Court deems appropriate.

Respectfully submitted,

**John David Mooney,**  
By counsel,

s/Nicholas S. Preservati  
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Joseph L. Jenkins (W.Va. Bar #9680)  
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*Counsel for Defendant*

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**JOHN DAVID MOONEY,**

**Defendant.**

**CERTIFICATE OF SERVICE**

I certify that on the 13th day of November, 2007, I filed the foregoing **Motion for Sur-Rebuttal during Closing Arguments** with the Court using CM/ECF which will send notification of such filing to the following CM/ECF participants:

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